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United States Securities and Exchange Commission

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JAMMIN' JAVA CORP., dba MARLEY  
COFFEE, SHANE G. WHITTLE,  
WAYNE S. P. WEAVER, MICHAEL K.  
SUN, RENE BERLINGER, STEPHEN B.  
WHEATLEY, KEVIN P. MILLER,  
MOHAMMED A. AL-BARWANI,  
ALEXANDER J. HUNTER, and  
THOMAS E. HUNTER,

Defendants.

Case No. 2:15-CV-08921 SVW (MRWx)

**MOTION FOR ENTRY OF FINAL  
JUDGMENT AGAINST  
DEFENDANT STEPHEN B.  
WHEATLEY**

1 Based on the Consent of Defendant Stephen B. Wheatley (“Wheatley”),  
2 attached hereto as Exhibit 1, and pursuant to Rule 58(d) of the Federal Rules of Civil  
3 Procedure, Plaintiff, the U.S. Securities and Exchange Commission (“Commission”),  
4 respectfully requests that this Court enter a final judgment against Wheatley in the  
5 form attached as Exhibit 2 (“Proposed Judgment”).

6 1. On November 17, 2015, the Commission filed a complaint against  
7 Wheatley, Jammin’ Java Corp. (“Jammin’ Java”), and eight other individuals for  
8 violations of the federal securities laws in connection with a \$78 million pump-and-  
9 dump scheme.<sup>1</sup> (Dkt. No. 1)

10 2. The Complaint alleged that Wheatley violated Sections 5(a) and 5(c) of  
11 the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77e(a) and (c), by directly  
12 or indirectly facilitating an unregistered distribution of its stock to the public.<sup>2</sup>

13 3. As to Wheatley, the Complaint seeks an order of permanent injunction,  
14 disgorgement and prejudgment interest, civil monetary penalties, and a penny stock  
15 bar.

16 4. The Commission alleged that no registration statement was filed or in  
17 effect with any of the offers or sales of Jammin’ Java stock to the public.

18 5. The Commission further alleged that Wheatley directly or indirectly sold  
19 shares as part of the unregistered distribution. Specifically, the Commission alleged  
20 that Wheatley controlled an offshore entity that distributed more than 6.5 million  
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22 <sup>1</sup> On May 31, 2016 the Commission filed a Motion for the Entry of Final Judgment  
23 by Consent as to Defendant Jammin’ Java (Dkt. No. 90), which is set for hearing on  
24 July 11, 2016.

25 <sup>2</sup> To establish a *prima facie* case of a Section 5 violation, the Commission must show  
26 (1) that no registration statement was in effect or filed as to the securities involved;  
27 (2) that the defendant directly or indirectly sold, offered to sell, or offered to buy the  
28 securities; and (3) that the sale or offer was made through the use of interstate  
facilities or the mails. To effectuate the purpose of the registration provisions, no  
proof of *scienter* is required. Once the Commission demonstrates a *prima facie* case  
of Section 5 liability, the alleged violator bears the burden of establishing a valid  
exemption.

1 shares of Jammin Java stock to the public, and that Wheatley was associated with a  
2 group that distributed a total of approximately 45 million shares to the public. The  
3 Commission alleged that Wheatley took various steps to facilitate the distribution.

4 6. The Commission also alleged that the sales or offers were made through  
5 the use of interstate facilities or the mails.

6 7. According to the Complaint, through the offshore entity he controlled,  
7 Wheatley received more than \$13 million in connection with the illegal distribution.

8 8. Wheatley and the Commission have entered into a formal cooperation  
9 agreement in connection with this litigation.

10 9. Wheatley has agreed to resolve this matter with the Commission by  
11 consenting to the relief requested in the Proposed Judgment.

12 10. In Paragraph 1 of the Consent, Wheatley acknowledges having been  
13 served with the complaint in this action and admits the Court's jurisdiction over him  
14 and over the subject matter of this action.

15 11. The Proposed Judgment (i) permanently enjoins Wheatley from  
16 violating Sections 5(a) and 5(c) of the Securities Act; (ii) orders him to disgorge  
17 \$2.75 million, composed of \$2,364,125 in disgorgement and \$385,875 in  
18 prejudgment interest; and (iii) prohibits him from participating in an offering of  
19 penny stock under Section 20(g) of the Securities Act, 15 U.S.C. § 77t, and Section  
20 21(d)(6) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u.<sup>3</sup>

21 12. As reflected in the Consent, the Proposed Judgment has been reviewed  
22 by Wheatley and his counsel.

23 13. On March 18, 2016, Wheatley filed an Answer and Affirmative  
24 Defenses to the Complaint. (Dkt. No. 32). On April 6, 2016, Wheatley filed an  
25 Amended Answer and Affirmative Defenses. (Dkt. No. 44). Pursuant to Paragraph 11  
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27 <sup>3</sup> In light of Wheatley's cooperation and other considerations, the Commission is  
28 forgoing its claim to a civil penalty.

1 of his Consent, Wheatley withdraws both the initial Answer and Affirmative  
2 Defenses and the Amended Answer and Affirmative Defenses.

3 14. The Commission's case against the remaining Defendants will continue.

4 15. Under Rule 54(b) of the Federal Rules of Civil Procedure, there is no  
5 just reason to delay entry of final judgment as to Wheatley. Entry of the Proposed  
6 Judgment will resolve all claims against Wheatley in this action. There is little risk of  
7 piecemeal appeals as Wheatley has waived his right to appeal from this final  
8 judgment, as reflected in Exhibit 1.

9 16. In addition, entry of the Proposed Judgment will narrow the issues to be  
10 resolved at trial, conserving judicial resources and saving the Commission and  
11 Wheatley the time and expense of continued discovery and litigation.

12 WHEREFORE, because the Proposed Judgment will resolve the claims against  
13 Wheatley and conserve judicial resources, the Commission respectfully requests that  
14 the Court find that there is no just reason to delay entry of final judgment and enter  
15 the Proposed Judgment as to Defendant Wheatley.

16 Dated: June 17, 2016

Respectfully submitted,

17 /s/ Peter Senechalle

18 Peter Senechalle

19 U.S. Securities and Exchange Commission

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**CERTIFICATE OF SERVICE**

Peter Senechalle hereby certifies that he caused the foregoing document to be electronically filed through the Court's CM/ECF system on June 17, 2016, which automatically sends an electronic copy of the document to all counsel of record.

**s/Peter Senechalle**